

**Art Berger, a sole proprietor d/b/a Art Berger and Detroit Area Local 67, Operative Plasterers' and Cement Masons International Association, AFL-CIO.** Case 7-CA-35151

July 19, 1996

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

On April 28, 1994, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> *inter alia*, ordering Art Berger, a sole proprietor d/b/a Art Berger, Romeo, Michigan, to make whole its unit employees by making all contributions it had failed to make since May 15, 1993, to the fringe benefit funds required by its collective-bargaining agreement with Detroit Area Local 67, Operative Plasterers' and Cement Masons International Association, AFL-CIO. On October 19, 1994, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amounts due the fringe benefit funds, on March 4, 1996, the Regional Director for Region 7 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated March 28, 1996,<sup>2</sup> the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer were filed by April 12, 1996, summary judgment would be sought. The Respondent filed no answer.

On June 17, 1996, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On June 20, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in

the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the amounts due the fringe benefit funds are as stated in the compliance specification, and we will order payment by the Respondent of \$5,522.40 to the fringe benefit funds on behalf of the unit employees, plus interest accrued on the amounts to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondent, Art Berger, a sole proprietor, Romeo, Michigan, its officers, agents, successors, and assigns, shall pay the following amounts, plus any additional amounts that accrue on those amounts to the date of payment as computed in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979):

<i>FRINGE BENEFIT FUND</i>	<i>CONTRIBUTION</i>
Health Care	\$2,160.00
Pension	\$1,800.00
Vacation	\$1,080.00
Apprentice	\$72.00
Int Pension	\$360.00
Ind. Promot	\$50.40
<b><i>TOTAL:</i></b>	<b><i>\$5,522.40</i></b>

<sup>1</sup> 313 NLRB 1129.

<sup>2</sup> The letter was sent by both certified and regular mail. Although the certified letter was returned to the Regional Office marked "unclaimed," failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). In addition, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987). Furthermore, even if no further reminder or warning of the consequences of failing to file an answer were sent or given to the Respondent, this would not warrant denial of the motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).